

AMENDED IN ASSEMBLY JUNE 12, 2006

AMENDED IN SENATE MAY 2, 2006

AMENDED IN SENATE APRIL 20, 2006

AMENDED IN SENATE APRIL 6, 2006

SENATE BILL

No. 1650

Introduced by Senators Kehoe and Dunn

February 24, 2006

An act to amend Section 1263.510 of, and to add Sections 1245.245 and 1263.615 to, the Code of Civil Procedure, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SB 1650, as amended, Kehoe. Eminent domain.

Existing law requires the governing body of a public entity to adopt a resolution of necessity, as specified, and send related notices before commencing an eminent domain proceeding. Existing law provides that an owner of property taken by eminent domain is entitled to compensation, including compensation for goodwill.

This bill would require the governing body of a public entity, before the public entity may use property that is subject to a resolution of necessity, as specified, for a public use other than the public use stated in the resolution to adopt a resolution authorizing a different use of the property by a vote of at least 2/3 of all members of the governing body of the public entity or a greater vote as required by statute, charter, or ordinance. The bill would also require a public entity to sell property that is not used for the public use stated in the resolution within 10 years of the adoption of the resolution unless the governing body adopts a resolution authorizing a different use or reauthorizing the

existing stated public use by a vote as described above. The bill would require specified property subject to the new resolution procedure to be offered back to the ~~original owner or owners~~ *person or persons from whom the property was acquired* of the property, subject to certain requirements, if the public entity fails to adopt a new resolution or a resolution reauthorizing the stated public use, and that property was not used for the public use stated in the original resolution of necessity or a new resolution authorizing a different use or reauthorizing the existing stated public use between the time of the property's acquisition and the time of the public entity's failure to adopt a new resolution. The bill would require the Department of Housing and Community Development to provide specified information to a public entity in connection with property that is a single-family residence.

This bill would also require a public entity acquiring property under specified circumstances to offer the owner of the property a one-year leaseback agreement for that property owner's continued use, subject to the property owner's payment of fair market rents and compliance with other specified conditions, unless the public entity states in writing that the development, redevelopment, or use of the property is scheduled to begin within two years of its acquisition. With regard to the calculation of compensation for the property taken, the bill would prohibit additional goodwill value from accruing during the leaseback.

The bill would apply prospectively, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1245.245 is added to the Code of Civil
2 Procedure, to read:
3 1245.245. (a) Property acquired by a public entity by any
4 means set forth in subdivision (e) that is subject to a resolution of
5 necessity adopted pursuant to this article shall only be used for
6 the public use stated in the resolution unless the governing body
7 of the public entity adopts a resolution authorizing a different use
8 of the property by a vote of at least two-thirds of all members of
9 the governing body of the public entity, or a greater vote as
10 required by statute, charter, or ordinance. The ~~new~~ resolution
11 shall contain all of the following:

1 (1) A general statement of the new public use that is proposed
2 for the property and a reference to the statute that would have
3 authorized the public entity to acquire the property by eminent
4 domain for that use.

5 (2) A description of the general location and extent of the
6 property proposed to be used for the new use, with sufficient
7 detail for reasonable identification.

8 (3) A declaration that the governing body has found and
9 determined each of the following:

10 (A) The public interest and necessity require the proposed use.

11 (B) The proposed use is planned and located in the manner
12 that will be most compatible with the greatest public good and
13 least private injury.

14 (C) The property described in the resolution is necessary for
15 the proposed use.

16 (b) Property acquired by a public entity by any means set forth
17 in subdivision (e) that is subject to a resolution of necessity
18 pursuant to this article, and is not used for the public use stated in
19 the resolution of necessity within 10 years of the adoption of the
20 resolution of necessity, shall be sold in accordance with the terms
21 of subdivisions (f) to ~~(h)~~ (g), inclusive, unless the governing
22 body adopts a resolution according to the terms of subdivision (a)
23 or a resolution according to the terms of this subdivision
24 reauthorizing the existing stated public use of the property by a
25 vote of at least two-thirds of all members of the governing body
26 of the public entity or a greater vote as required by statute,
27 charter, or ordinance. A reauthorization resolution under this
28 subdivision shall contain all of the following:

29 (1) A general statement of the public use that is proposed to be
30 reauthorized for the property and a reference to the statute that
31 authorized the public entity to acquire the property by eminent
32 domain for that use.

33 (2) A description of the general location and extent of the
34 property proposed to be used for the public use, but not yet in use
35 for the public use, with sufficient detail for reasonable
36 identification.

37 (3) A declaration that the governing body has found and
38 determined each of the following:

39 (A) The public interest and necessity require the proposed use.

1 (B) The proposed use is planned and located in the manner
2 that will be most compatible with the greatest public good and
3 least private injury.

4 (C) The property described in the resolution is necessary for
5 the proposed use.

6 (c) In addition to any notice required by law, the notice
7 required for a new or reauthorization resolution sought pursuant
8 to subdivision (a) or (b) shall comply with the requirements of
9 Section 1245.235 and shall be sent to each person who was given
10 notice required by Section 1245.235 in connection with the
11 original acquisition of the property by the public entity.

12 (d) ~~Any judicial~~ *Judicial* review of an action pursuant to
13 subdivision (a) or (b) ~~shall be governed by Section 1245.255~~ *may*
14 *be obtained by a person who had an interest in the property*
15 *described in the resolution at the time that the property was*
16 *acquired by the public entity, and shall be governed by Section*
17 *1085.*

18 (e) The following property acquisitions are subject to the
19 requirements of this section:

20 (1) Any acquisition by a public entity pursuant to eminent
21 domain.

22 (2) Any acquisition by a public entity following adoption of a
23 resolution of necessity pursuant to this article for the property.

24 (3) Any acquisition by a public entity prior to the adoption of
25 a resolution of necessity pursuant to this article for the property,
26 but subsequent to a written notice that the public entity may take
27 the property by eminent domain.

28 (f) If the public entity fails to adopt either a new resolution
29 pursuant to subdivision (a) or a reauthorization resolution
30 pursuant to subdivision (b), as required by this section, and that
31 property was not used for the public use stated in a resolution of
32 necessity adopted pursuant to this article or a resolution adopted
33 pursuant to subdivision (a) or (b) between the time of its
34 acquisition and the time of the public entity's failure to adopt a
35 resolution pursuant to subdivision (a) or (b), the public entity
36 ~~shall offer the original owner or owners of the property the right~~
37 ~~of first refusal to purchase the property at the present fair market~~
38 ~~value, as determined by independent, licensed appraisers, except~~
39 ~~as provided in subdivision (g).~~

~~(g) If the public entity fails to adopt either a new resolution pursuant to subdivision (a) or a reauthorization resolution pursuant to subdivision (b) for a property that is a single-family residence, as required by this section, and that property was not used for the public use stated in a resolution of necessity adopted pursuant to this article or a resolution adopted pursuant to subdivision (a) or (b) between the time of its acquisition and the time of the public entity's failure to adopt a resolution pursuant to subdivision (a) or (b), the public entity shall offer the original owner or owners of the property the right of first refusal to purchase the property at an affordable price, which price shall not shall offer the person or persons from whom the property was acquired the right of first refusal to purchase the property pursuant to this section, as follows:~~

~~(1) At the present market value, as determined by independent licensed appraisers.~~

~~(2) For property that was a single family residence at the time of acquisition, at an affordable price, which price shall not be greater than the price paid by the agency for the original acquisition, adjusted for inflation, and shall not be greater than fair market value, if the following requirements are met:~~

~~(1) The original owner or owners~~

~~(A) The person or persons from whom the property was acquired certify their income to the public entity as persons or families of low or moderate income.~~

~~(2)~~

~~(B) If the single-family residence is offered at a price that is less than fair market value, the public entity may verify such the certifications of income in accordance with procedures used for verification of incomes of purchasers and occupants of housing financed by the California Housing Finance Agency.~~

~~(3)~~

~~(C) If the single-family residence is offered at a price that is less than fair market value, the public entity shall impose terms, conditions, and restrictions to assure ensure that the residence will remain will either:~~

~~(i) Remain owner-occupied by the person or persons from whom the property was acquired for at least five years.~~

~~(ii) Remain available to persons or families of low or moderate income and households with incomes no greater than the incomes~~

1 of the present occupants in proportion to the area median income
2 *for the longest feasible time, but for not less than 55 years for*
3 *rental units and 45 years for home ownership units.*~~The~~

4 (D) The Department of Housing and Community Development
5 shall provide to the public entity recommendations of standards
6 and criteria for those prices, terms, conditions, and restrictions.

7 ~~(h) If the original owner~~

8 (g) *If the person from whom the property was acquired of a*
9 *property does not choose to purchase the property as provided in*
10 *subdivisions (f) and (g) subdivision (f) of this section, or if the*
11 *public entity fails to adopt a resolution as required pursuant to*
12 *subdivision (a) or (b) but is not required to offer a right of first*
13 *refusal pursuant to subdivision (f) or (g), the public entity shall*
14 *sell the property as surplus property pursuant to Article 8*
15 *(commencing with Section 54220) of Chapter 5 of Division 2 of*
16 *Title 5 of the Government Code.*

17 ~~(i)~~

18 (h) If residential property acquired by a public entity by any
19 means set forth in subdivision (e) is sold as surplus property
20 pursuant to subdivision ~~(h)~~ (g), and that property was not used
21 for the public use stated in a resolution of necessity adopted
22 pursuant to this article or a resolution adopted pursuant to
23 subdivisions (a) or (b) between the time of its acquisition and the
24 time of its sale as surplus property, the public entity shall pay to
25 ~~the original owner~~ *person or persons from whom the public entity*
26 *acquired the property* the sum of any financial gain between the
27 original acquisition price, adjusted for inflation, and the final sale
28 price.

29 ~~(j)~~

30 (i) Upon completion of any acquisition described in
31 subdivision (e) or upon the adoption of a resolution of necessity
32 pursuant to this section, whichever is later, the public entity shall
33 give written notice to the ~~owners or former owners of the~~
34 ~~properties~~ *person or persons from whom the properties were*
35 *acquired as described in subdivision (e) stating that the notice,*
36 *right of first refusal, and return of financial gain rights discussed*
37 *in this section may accrue.*

38 SEC. 2. Section 1263.510 of the Code of Civil Procedure is
39 amended to read:

1 1263.510. (a) The owner of a business conducted on the
2 property taken, or on the remainder if the property is part of a
3 larger parcel, shall be compensated for loss of goodwill if the
4 owner proves all of the following:

5 (1) The loss is caused by the taking of the property or the
6 injury to the remainder.

7 (2) The loss cannot reasonably be prevented by a relocation of
8 the business or by taking steps and adopting procedures that a
9 reasonably prudent person would take and adopt in preserving
10 the goodwill.

11 (3) Compensation for the loss will not be included in payments
12 under Section 7262 of the Government Code.

13 (4) Compensation for the loss will not be duplicated in the
14 compensation otherwise awarded to the owner.

15 (b) Within the meaning of this article, “goodwill” consists of
16 the benefits that accrue to a business as a result of its location,
17 reputation for dependability, skill or quality, and any other
18 circumstances resulting in probable retention of old or
19 acquisition of new patronage.

20 (c) If the public entity and the owner enter into a leaseback
21 agreement pursuant to Section 1263.615, the following shall
22 apply:

23 (1) No additional goodwill shall accrue during the lease.

24 (2) The entering of a leaseback agreement shall not be a factor
25 in determining goodwill. Any liability for goodwill shall be
26 established and paid at the time of acquisition of the property by
27 eminent domain or subsequent to notice that the property may be
28 taken by eminent domain.

29 SEC. 3. Section 1263.615 is added to the Code of Civil
30 Procedure, to read:

31 1263.615. (a) A public entity shall offer a one-year leaseback
32 agreement to the owner of a property to be acquired by any
33 method set forth in subdivision (b) for that property owner’s
34 continued use of the property upon acquisition, subject to the
35 property owner’s payment of fair market rents and compliance
36 with other conditions set forth in subdivision (c), unless the
37 public entity states in writing that the development,
38 redevelopment, or use of the property for its stated public use is
39 scheduled to begin within two years of its acquisition. This
40 section shall not apply if the public entity states in writing that a

1 leaseback of the property would create or allow the continuation
2 of a public nuisance to the surrounding community.

3 (b) The following property acquisitions are subject to the
4 requirements of this section:

5 (1) Any acquisition by a public entity pursuant to eminent
6 domain.

7 (2) Any acquisition by a public entity following adoption of a
8 resolution of necessity pursuant to Article 2 (commencing with
9 Section 1245.210) of Chapter 4 for the property.

10 (3) Any acquisition by a public entity prior to the adoption of
11 a resolution of necessity pursuant to Article 2 (commencing with
12 Section 1245.210) of Chapter 4 for the property, but subsequent
13 to a written notice that the public entity may take the property by
14 eminent domain.

15 (c) The following conditions shall apply to any leaseback
16 offered pursuant to this section:

17 (1) The lessee shall be responsible for any additional waste or
18 nuisance on the property, and for any other liability arising from
19 the continued use of the property.

20 (2) The lessor may demand a security deposit to cover any
21 potential liability arising from the leaseback. The security deposit
22 shall be reasonable in light of the use of the leased property.

23 (3) The lessor shall be indemnified from any legal liability and
24 attorney's fees resulting from any lawsuit against the lessee or
25 lessor, arising from the operation of the lessee's business or use
26 of the property.

27 (4) The lessor shall require the lessee to carry adequate
28 insurance to cover potential liabilities arising from the lease and
29 use of the property, and shall require that insurance to name the
30 lessor as an additional insured.

31 (5) Additional goodwill shall not accrue during any lease.

32 (6) The lessee shall be subject to unlawful detainer
33 proceedings as provided by law.

34 (d) A public entity shall offer to renew a leaseback agreement
35 for one-year terms, subject to any rent adjustment to reflect
36 inflation and upon compliance with other conditions set forth in
37 subdivision (c), unless the public entity states in writing that the
38 development, redevelopment, or use of the property for its stated
39 public use is scheduled to begin within two years of the
40 termination date of the lease. At least 60 days prior to the lease

1 termination date, the public entity lessor shall either offer a
2 one-year renewal of the lease or send a statement declaring that
3 the lease will not be renewed because the development,
4 redevelopment, or use of the property is scheduled to begin
5 within two years of the lease termination date. The lessee shall
6 either accept or reject a lease renewal offer at least 30 days prior
7 to the lease termination date. The lessee's failure to accept a
8 renewal offer in a timely manner shall constitute a rejection of
9 the renewal offer. A lessor's failure to offer a renewal or give the
10 notice as required shall extend the lease term for 60-day
11 increments until an offer or notice is made, and if a notice of
12 termination is given after the lease termination date, the lessee
13 shall have no less than 60 days to vacate the property. A lessee's
14 failure to accept within 30 days a renewal offer made subsequent
15 to the lease termination date shall constitute a rejection of the
16 offer.

17 (e) A party who holds over after expiration of the lease shall
18 be subject to unlawful detainer proceedings and shall also be
19 subject to the lessor for holdover damages.

20 (f) A leaseback entered into pursuant to this section shall not
21 affect the amount of compensation otherwise payable to the
22 property owner for the property to be acquired.

23 SEC. 4. This act shall apply prospectively and shall apply to
24 property acquired after January 1, 2007.